Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Jurisdictional Separations and Referral to the Federal-State Joint Board	)	CC Docket No. 80-286
	)	
Communications Assistance for Law Enforcement Act and Broadband Access Services	)	CC Docket No. 04-295

COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc., for itself and its wholly owned affiliates[1] ("SBC"), submits the following comments in response to the *Public Notice* dated March 2, 2005 in the above-captioned proceedings.[2]

In 2001, the Commission ordered a five-year interim freeze of the Part 36 separations allocations process ("separations freeze") to stabilize and simplify the separations process while the Commission, working with the Federal-State Joint Board on Jurisdictional Separations ("Joint Board"), embarked on the initiative to comprehensively reform the separations requirements.[3] At that time, the Commission recognized that the existing Part 36 jurisdictional separations rules were outdated regulatory mechanisms that were not aligned with the evolving

[1] SBC Communications Inc. ("SBC") files these Comments on behalf of its subsidiaries, Southwestern Bell Telephone, L.P. ("SWBT"), Pacific Bell Telephone Company, Nevada Bell Telephone Company, Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, Wisconsin Bell, Inc. and The Southern New England Telephone Company.

[2] *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Notice of Proposed Rulemaking, 12 FCC Rcd 22120 (1997) ("Separations NPRM"); *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, Notice of Proposed Rulemaking and Declaratory Ruling, 19 FCC Rcd 15676 (2004) ("CALEA NPRM").

[3] *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 16 FCC Rcd 11382 at paras. 1 and 2 (2001) ("*Separations Freeze Order*").

telecommunications marketplace.[4] Clearly, it was the Commission's intention that the Joint Board utilize the five-year freeze period to assess and develop a recommendation for separations reform.[5] Despite the Commission's expectations, the Joint Board has not made any recommendation or solicited comments from the industry on post-freeze separations reform or policy issues since it issued the "Glide Path" paper in 2001.[6]

Instead of leading the effort by requesting comments on the prerequisite broad policy issues associated with separations reform, the Joint Board leads the way with a very narrowly focused inquiry limited to separations issues associated with the Communications Assistance for Law Enforcement Act ("CALEA").[7] SBC acknowledges the importance of CALEA implementation and has gone to great lengths to support and facilitate that implementation; however, the separations issues associated with CALEA are miniscule when compared to the unresolved separations issues related to intra and inter-state telecommunications services.

Instead, the Joint Board should focus on its comprehensive review of separations and address any CALEA-related issues in that context. Specifically, SBC believes that the first step in any further review of separations should include an evaluation of whether separations should be eliminated altogether, as suggested by the Commission in the *Separations Freeze Order*.[8] The existing separations process does not benefit consumers, nor does it encourage the deployment of advanced technologies. Moreover, for price cap carriers like SBC, separations

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[4] *Id*. at para 13.

[5] *Id.*

[6] "Options for Separations: A Paper Prepared by the State Members of the Separations Joint Board," CC Docket No. 80-286, filed December 18, 2001 ("Glide Path paper").

[7] *See* "Federal-State Joint Board on Jurisdictional Separations Seeks Comment On Communications Assistance For Law Enforcement Act (CALEA) Issues," CC Docket No. 80-286, ET Docket No. 04-295, *Public Notice*, DA 05-535 (rel. March 2, 2005) (*Public Notice*).

[8] *Separations Freeze Order* at para. 1.

does not affect pricing of services. Therefore, SBC suggests before the Joint Board opines on separations requirements for CALEA services, it must first consider the regulatory necessity of the entire separations regime. As a result, the Joint Board should not recommend any changes to the separations requirements for CALEA at this time and the separations factors for CALEA services should remain frozen until such time as the Commission reforms separations *in toto*.

Despite SBC's position on the Joint Board's current approach, SBC takes this opportunity to respond to the specific questions contained in the *Public Notice*.

1. *What equipment, investments, and other costs (including expenses) can or should be considered to be related to CALEA compliance?*

SBC's costs associated with CALEA compliance fall into one of three categories, existing investment associated with CALEA requirements for telecommunications services, on-going operational costs, and potential future investment to comply with expanded CALEA requirements for broadband and Internet services. SBC's existing investment for CALEA compliance for telecommunications services consists of switch software generic upgrades to support core CALEA functionality (Nortel DMS100 NA 014 and Lucent 5ESS 5E14), switch CALEA capacity growth, CALEA readiness activities (lab and field testing, approvals, methods and procedures, and configuration), as well as CALEA punch list and dial-out specific switch software upgrades (Lucent 5ESS 5E16.2 and Seimens EWSD REL20).

SBC's on-going costs for CALEA compliance include SBC's operational costs associated with the provisioning of CALEA services. Law enforcement agencies request CALEA intercepts from SBC through a specialized operations center, the SBC Court Order Bureau. The SBC Court Order Bureau is responsible for end-to-end project management of CALEA services, which includes, entering orders into the provisioning systems, ensuring the intercept is engineered, tested and turned over to law enforcement and ultimately disconnected. SBC's on-going costs associated with the Court Order Bureau include general employee related expenses, such as wages and salaries, information technology, and real estate expenses. In addition, SBC also incurs on-going expenses associated with the provisioning of CALEA intercepts. These expenses include network costs such as central office and outside plant facilities, as well as technician-related expenses for installation, provisioning, maintenance, repair and disconnection of the services.

Since the Commission is exploring whether to expand CALEA obligations to other technologies, SBC anticipates that it may be required to make substantial investments and incur implementation costs for these new CALEA capabilities. However, SBC, as well as other industry members, is unable to estimate the investment or expense requirements at this time since the CALEA regulations and requirements for broadband and Internet services are still under consideration in the *CALEA NPRM* proceeding. If mandated, SBC expects that at a minimum, new hardware and software investment as well as increased network-related and Court Order Bureau expenses, will be required to implement those capabilities. As stated above, SBC is unable to estimate the magnitude of the costs of future CALEA requirements at this time; however, SBC urges the Joint Board and the Commission to ensure that the CALEA rules include a reasonable cost recovery mechanism.[9]

2. *Who are the users (anticipated and historical) of CALEA-related services (i.e., federal, state, or local LEAs, or others)? What has been their relative usage, and do you expect that relationship to change in the future? If so, how?*

Based on SBC's experience, the Federal Bureau of Investigations ("FBI") makes 99% of the requests for CALEA-related services. While the FBI is the primary user of SBC's CALEA-

[9] As a point of illustration, SBC estimates that it spent approximately $30M for its initial CALEA implementation. If carriers are expected to invest in CALEA technology for broadband and Internet services, carriers should necessarily be allowed to recover the costs and investment associated with the implementation and provisioning of any new CALEA capabilities.

related services, it is important to note that CALEA-related services comprise less than 6% of the FBI's requests for intercepts; the majority of FBI requests are for basic wire taps, traces and PEN registers. As a result, SBC's investment in CALEA capability is rarely utilized by the FBI and almost never requested by local law enforcement. Since there are many factors that determine the type of surveillance capabilities that are requested by law enforcement, SBC is unable to estimate whether the relative usage of CALEA services will change in the future.

3. *Should CALEA-related costs incurred be allocated to a single category identified as CALEA-related expenses or should the costs associated with compliance be allocated to the existing separations categories or subcategories within them?*

In the short-term, CALEA-related costs should be allocated to existing categories based on the frozen separations factors in compliance with the *Separations Freeze Order*. As a result of the separations freeze, SBC no longer maintains the study mechanisms necessary to capture new separations category assignments. Consequently, it would be costly and counter-productive to lift the separations freeze solely for CALEA services. Instead, the Commission and Joint Board should focus on next generation separations policy that is consistent with the Commission's stated goals of simplicity, reduced regulatory burden and competitive neutrality.[10]

4. *If changes to Part 36 are required or appropriate, are any similar or related changes required in Part 32 or in any other Commission rules?*

Carriers that are required to follow the Commission's jurisdictional separations rules in Part 36 are required to allocate or assign revenues and costs between jurisdictions into the appropriate account as defined in the Commission's Universal System of Accounts ("USOA"). Consequently, if the cost allocation rules are changed in a manner that requires costs to be allocated to an account that does not currently exist in the USOA, changes would be required to Part 32 to add the new account to the Part 32 accounting system. In addition, changes to Part 69

[10] *Separations Freeze Order* at para. 13.

may also be required in order to apportion the costs or expenses to specific interstate access services.

5. *Should CALEA-related revenues received from the Attorney General be allocated to ensure that revenues follow their associated costs to a particular jurisdiction?*
6. *Should CALEA-related costs for circuit-based capabilities be separated, and if so, how should the associated costs and revenues be allocated for jurisdictional separations purposes?*
7. *Should CALEA-related costs for packet-mode capabilities be separated, and if so, how should the associated costs and revenues be allocated for jurisdictional separations purposes?*
   (i)Should all CALEA-related costs and revenues be directly assigned to the Federal jurisdiction, based on the fact that CALEA is a Federal mandate?
   (ii) Should CALEA-related costs and revenues be allocated between jurisdictions based on relative-use factors derived from the relative electronic surveillance requirements of the LEAs?
   (iii) Should CALEA-related costs and revenues be allocated between jurisdictions based on a fixed factor, and if so, what should the fixed factor be based on?

As discussed above, the Joint Board must first determine whether the jurisdictional separations process is necessary, in particular for price-cap carriers where there is little or no link between separations studies and price cap revenues. The Joint Board must also analyze the need for separations in light of today's competitive markets and the capabilities of new technologies that have been deployed in the telecommunications and information services networks. In the absence of a Joint Board recommendation on these threshold issues, the Joint Board cannot possibly opine on how or whether CALEA-related investment, revenues or expenses should be directed to intra or interstate jurisdictions.

In the rare case that the Joint Board finds that there is a continued need for the Part 36 separations process, all CALEA-related investment, revenue and expense should be booked in the appropriate accounts for federal law enforcement services. Since CALEA is a federal mandate, CALEA-related investment, revenue and costs should be booked in the interstate jurisdiction. If states impose state-mandated law enforcement requirements, the investment, revenues and costs associated with any state-mandated program should be directed to the intrastate jurisdiction.

8. *Should the interim freeze of the Commission's jurisdictional separations rules affect the treatment of CALEA-related costs? If there are any recommended changes to Part 36 of the Commission's rules, should they wait until the end of the freeze, or should the frozen factors and categories be adjusted during the freeze?*

As discussed above, any recommended changes for CALEA-related separations must be consistent with the Commission's next generation policy for separations. Consequently, any proposed change to the separations process for CALEA services must necessarily wait until the end of the separations freeze. Moreover, SBC no longer maintains the study mechanisms or resources necessary to capture new separations category assignments. Consequently, it would be unduly burdensome and expensive to lift the separations freeze solely for CALEA services.

Before considering separations issues specific to niche services, like CALEA services, the Joint Board should proceed without any further delay to examine the necessity of the overall separations regime.

Respectfully submitted,

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